

ZONING BOARD OF APPEALS MINUTES

July 9, 2013 – Regular Meeting
Delta Township Administration Building

I CALL TO ORDER

Vice Chairman Barnhart called the meeting to order.

II PLEDGE OF ALLEGIANCE

Vice Chairman Barnhart led the Board and others present in reciting the Pledge of Allegiance to the Flag.

III ROLL CALL

Members Present: Arking, Barnhart, Hicks, Laforet, Newman, and Parr

Members Absent: Reed - excused

Others Present: Chris Gruba, Assistant Planner and Community Development Director
Mark Graham

IV SET AND ADJUST AGENDA

Mr. Barnhart asked if there were any changes to the agenda.

Mr. Gruba said there were no changes.

V APPROVAL OF MINUTES

MOTION BY HICKS, SECONDED BY ARKING, THAT THE MAY 14, 2013 AND THE JUNE 11, 2013 REGULAR MEETING MINUTES BE APPROVED. VOICE VOTE. CARRIED 6-0.

VI OLD BUSINESS

Zoning Ordinance Appeal of the Zoning Administrator's Decision: Nicole Schuiling, owner of the property at 4513 Cranberry Court, is appealing the Zoning Administrator's decision regarding Sections 2.2.0, 3.17.0 (A)(1) and 9.2.0 of the Zoning Ordinance.

Community Development Director Mark Graham introduced himself to the audience by noting that he also acted as the Township's Zoning Administrator. He noted that in April, the

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Planning Department received a complaint alleging that there was a pot belly pig at a residence in the Park Meadow subdivision. Staff subsequently followed-up on the address that was given and contacted Nicole Schuiling who confirmed that she had a pot belly pig on the premises. Mr. Graham noted that staff had sent a letter to Ms. Schuiling informing her that her property was zoned RB, Low Density Residential and that the Township's Zoning Ordinance definition of livestock, which was animals including, but not limited to, horses, cattle, sheep, goats, swine, poultry, and rabbits, were not permitted within residential zoning districts. Mr. Graham said, acting in his capacity as Zoning Administrator, he had made an interpretation that the pot belly pig was not allowed and that it constituted a zoning violation. He acknowledged Section 3.17.0 of the Zoning Ordinance which read that the keeping of household pets, including dogs, cats, fish, birds, hamsters, and other animals generally regarded as household pets were permitted as an accessory use in any residential or agricultural zoning districts. However, he noted that the Zoning Ordinance did not make any reference to pot belly pigs or swine, nor did it provide any documentation as to what was generally regarded as a household pet.

Mr. Graham noted that Section 1.3.0 of the Zoning Ordinance mandated that when there was a possible conflict between two sections of the ordinance, which he believed existed between the definition of "livestock" and the pet regulations in Section 3.17.0 A, the Zoning Administrator must apply the more restrictive provisions which he had done by determining that a pot belly pig was considered livestock. Mr. Graham said, as permitted by Section 23.2.0A of the Zoning Ordinance, anyone could appeal his decision to the Zoning Board of Appeals. He noted that Ms. Schuiling subsequently filed an appeal of the Zoning Administrator's decision to the Zoning Board of Appeals. Mr. Graham noted that this case went before the Zoning Board of Appeals on June 11th at which time the Zoning Board of Appeals tabled this issue and asked that the Township Board consider whether or not they would support amending the Zoning Ordinance regarding the provisions for livestock and pets. He said on June 17th the Township Board discussed possible amendments to the Zoning Ordinance and the Board decided not to instruct staff to undertake a study of the ordinance regarding possible amendments relating to livestock and pets. This Schuiling appeal has been placed back on the Zoning Board of Appeals agenda this evening for final action.

Ms. Laforet asked staff to clarify what the Zoning Board of Appeal's options was this evening.

Mr. Graham informed the Commission that Ms. Schuiling filed an appeal as per Section 23.2.0 of the Zoning Ordinance. He said it was the Zoning Board of Appeals responsibility this evening to reverse or affirm his decision.

Ms. Parr felt the Zoning Board of Appeals already went through the process of referring this case to the Township Board to determine whether or not they would agree to amend the Zoning Ordinance. She didn't feel the Zoning Board of Appeals should send this case back to the Township Board without the Zoning Board of Appeals making a decision on the pot belly

pig.

MOTION BY PARR TO GRANT THE APPLICANT THE ABILITY TO KEEP THE POT BELLY PIG AND TO STRONGLY URGE THE TOWNSHIP BOARD TO AMEND THE SECTION OF THE ORDINANCE PERTAINING TO PETS THAT THEY MUST BE NEUTERED, LICENSED, IMMUNIZED, AND ON A LEASH AT ALL TIMES. FURTHER, THAT THE ZONING BOARD OF APPEALS CONVEY TO THE BOARD THAT THERE WERE MANY DIFFERENT KINDS OF PETS THAT SHOULD BE LICENSED AND IMMUNIZED IN THE TOWNSHIP AND THAT THIS ISSUE SHOULD BE ADDRESSED AS SOON AS POSSIBLE.

Ms. Parr felt there were many different kinds of pets that should be licensed and immunized in the Township and that a pot belly pig was not a swine insofar as it was not used for food or livestock, but rather it was a pet.

Mr. Hicks stated that the Zoning Board of Appeals job this evening was that of an appellant jurisdiction. He said the applicant had, within her rights, requested and alleged that the Zoning Administrator made an error when he interpreted and rendered a decision relative to the applicable provision in the Zoning Ordinance. Mr. Hicks said the Zoning Board of Appeals responsibility this evening was to either affirm Mr. Graham's decision or reverse it and that any motion this evening had to be in the form of one of those options.

MOTION FAILED FOR LACK OF A SECOND.

Kevin Terrell said he was an Attorney hired to represent Nicole Schuiling in this matter. Mr. Terrell addressed the Board by noting that he disagreed with Mr. Hicks as to what the Board's responsibility was this evening based upon the Board's jurisdiction. He said Section 23.2.0, Jurisdiction of the Board of Appeals, stated that when an appellant alleges that there is an error in any order or requirement permit or interpretation, decision, or refusal made by the Zoning Official, zoning administrator, or any other township body, the Board of Appeals may reverse, affirm, hold in part, or may modify the order, requirement, permit, interpretation, decision, or refusal as in its opinion ought to be done and to that end, shall have the power of the administrative official to whom the appeal was taken. Mr. Terrell didn't feel the Board was limited to either granting or denying the interpretation, but rather the Board had the authority within their own by-laws to modify that in whole, or in part, as the Board saw appropriately fit. Mr. Terrell felt that was what the Board could do this evening, especially when they took into consideration that Mr. Graham had indicated that this was a gray area and that there was a conflict within the ordinance itself and that he had made a decision to resort back to a different section that stated that when there was a gray area, that he interpret using the stricter section of the ordinance. However, he said the Zoning Board of Appeals could determine that they found that not to be appropriate in this instance and therefore, the Board could overrule Mr. Graham's decision. Mr. Terrell felt some of the things that needed to be brought to the Board's attention were the question of what qualified as a pet. He noted

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that the United States Department of Agriculture classified pot belly pigs as pets and not as livestock and that they were listed on the pet animal therapy registry, they were sold in pet stores and by breeders and not at auctions like typical livestock.

Mr. Hicks said with respect to the definition of pet, he could apply the given definition of a pet; however, he would like Mr. Terrell to address the fact that in the Zoning Ordinance, livestock was defined as including swine and he questioned how you got around the fact that the definition of livestock included swine.

Mr. Terrell said he couldn't which was why the Zoning Ordinance needed to be amended, but when referencing the section of the ordinance pertaining to pets, it indicated that any other pet routinely kept within.

Mr. Hicks disagreed with Mr. Terrell in that he didn't feel it was any different than a statutory interpretation in that you can't have a decision on a statute from the court that rendered another portion of the statute nugatory. Mr. Hicks noted that if the Zoning Board of Appeals was to render a decision to ignore the fact that the livestock definition included swine in its enumerated list of animals that fell under the definition of livestock, you would therefore render nugatory the entire section of the ordinance that indicated where there was confusion, or cross of two different provisions, you are to apply the more strict of the two positions.

Mr. Terrell noted that the Township's Zoning Ordinance referred to the keeping of animals, as well as a stricter definition regarding the keeping of wild animals such as a dog within the wild family, or a cat within the wild family. Mr. Terrell said in this case, the ordinance was very vague and that it was the governing body's job to make sure that the vague ordinance didn't conflict with other ordinances and end up with a situation similar to this one. Mr. Terrell stated that in this case, the Township Board felt this was an issue they were not going to undertake because of time and cost issues.

Mr. Hicks said speaking as a member of the Township Board, Mr. Terrell may have accurately quoted the position of one Board member indicating that there were higher priorities in the Township, but the Township Board did not take any official action on the request to interpret or open up the ordinance for revision. Mr. Hicks indicated that this case came to the Zoning Board of Appeals by virtue of an application on an appeal of the zoning administrator's decision and that the Zoning Board of Appeals elected to table the request in order to determine whether the Township Board was interested in amending the Zoning Ordinance. He noted that the Township Board elected to not take any action in respect to the ordinance. Mr. Hicks stated that if the Township Board elected to consider an amendment to the ordinance, action by the Zoning Board of Appeals would be held in abeyance and the case may resolve itself by virtue of an amendment to the ordinance, or the Township Board may determine not to amend the ordinance in which case it preserved the applicant's right to come back before the Zoning Board of Appeals.

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Mr. Terrell didn't feel the decision was as cut and dry as either upholding or reversing Mr. Graham's decision, but rather he felt the Zoning Board of Appeals had other options available if they chose to use those options.

Mr. Hicks felt Mr. Terrell was correct that there was a provision in the ordinance that allowed the Zoning Board of Appeals to modify, reverse, interpret, or affirm the decision of the zoning administrator.

Mr. Terrell felt the Zoning Board of Appeals could rule that an error was made in the interpretation of Section 3.17.0 and that pot belly pigs were generally regarded as household pets based on evidence that had been presented. He didn't feel the entire ordinance needed to be thrown out or that it was forever, but in this situation, he felt it was important to look at all the facts pertaining to the term "generally regarded as household pets". Mr. Terrell said one of the most important things to look at was how the State handled this and that in Michigan; feed for livestock wasn't taxed, but feed for pot belly pigs sold at Soldans was taxed.

Mr. Hicks stated that it was difficult to get around the fact that livestock was specifically defined as including swine. He said in the absence of that, there may be a stronger argument, but you would have to completely ignore the definition of livestock as including swine, not certain swine, or species of swine, but just swine.

Mr. Terrell felt the Zoning Board of Appeals was focusing on one part of the ordinance that Mr. Graham had admittedly said was to some degree, in contrast and against another part of the ordinance.

Mr. Hicks said in which case, you have to fall back on the other section of the ordinance.

Mr. Terrell didn't feel the Zoning Board of Appeals was necessarily bound by doing that and that the Board could make the decision in this circumstance, based on the evidence presented, that the Board was going to modify it under these circumstances.

Mr. Hicks felt the Zoning Board of Appeals could render an interpretation, but it wouldn't physically alter the text of the ordinance itself and in this instance, Mr. Terrell was correct.

Mr. Terrell felt the Zoning Board of Appeals could refer the case back to the Township Board for further review. He mentioned the fact that the Lansing State Journal had conducted an on-line poll of over 500 people in the Greater Lansing Area and that 71% of those who participated in the poll felt that pot belly pigs were pets. He felt sending this back to the Township Board would allow his client to be able to start a petition drive and present those petitions to the Township Board.

Mr. Hicks asked if Mr. Terrell was aware that petitions had already been circulated on behalf of his client.

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Mr. Terrell said he was aware that petitions had been circulated, but they weren't specific to Delta Township.

Mr. Hicks said the petitions specifically referenced the text of Delta's Zoning Ordinance. Mr. Hicks said in regards to the poll that came out in the Lansing State Journal, he didn't govern based on polls or fear of voter reprisal, but rather he governed on what was before him and that he made an individual interpretation on each and every case that was before him. He said while other members of the Zoning Board of Appeals may be moved by the fact that 71% of people were in favor, how many of which we have no idea reside in Delta Township, meant nothing to him. Mr. Hicks said he realized that the poll results were compelling to Mr. Terrell and his client, but they had nothing to do with this particular instance on appeal as it came under the appellant jurisdiction of this Board. Mr. Hicks noted that when this request went to the Township Board, which was an elected Board, by being elected, they were put in the position to make decisions about whether or not they wanted to change the provisions of the ordinance and in this instance, the majority of the Board did not support a change to the ordinance. He stated that the Zoning Board of Appeals was present this evening because they had the Zoning Ordinance, as it presently existed, to work with.

Mr. Terrell agreed with Mr. Hicks, but he felt it was important to understand how potential citizens within Delta Township viewed such an issue and that it was helpful information for the Board to hear when they were trying to make a determination. Mr. Terrell felt the Board had other options available to them rather than just upholding or overruling the zoning administrator's interpretation. He said in this case, the Zoning Board of Appeals ruling that the pot belly pig fell within the definition of swine and not within the definition of "generally regarded as a household pet" would be wrong and that his client should be allowed to keep her pet. He indicated that his client's pot belly pig was a family pet and treated like any other household pet. Mr. Terrell reiterated the fact that in this situation, the Zoning Board of Appeals needed to look under the specific facts as it pertained to this case and not feel that they were limited by only the two options of a yes or no vote. Mr. Terrell asked the Zoning Board of Appeals to take that into consideration when making their ruling this evening.

Mr. Arking said he always tried to make sure the Zoning Board of Appeals didn't stray into expanding the law or making new laws because this Board was not a law making body, but rather they were an interpretive body. Mr. Arking noted that the Township Board was the body to determine whether or not to refine the definition of pet versus livestock, but the Township Board elected not to amend the ordinance and the Zoning Board of Appeals was bound to the existing language in the ordinance.

Ms. Laforet questioned whether the Zoning Board of Appeals could make a decision based on the fact that this was a gray area. Ms. Laforet suggested that the definition of pets and livestock be changed so as not to be specific to a particular animal, but rather refer to the use of that animal and then perhaps the Zoning Board of Appeals could allow the pot belly pig and direct the Township Board to amend the definition of pets.

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Mr. Arking said the question before the Zoning Board of Appeals this evening was not to amend the ordinance, but rather to rule on whether Mr. Graham's interpretation of the ordinance was correct or not.

Mr. Terrell also felt the Zoning Board of Appeals could grant a variance.

Mr. Hicks said while the provisions of the Zoning Ordinance that were cited grant broad powers, applicants came before the Zoning Board of Appeals on an application for a variance, an interpretation, or an appeal of the zoning administrator's decision and that they were separate and distinct and governed separately. Mr. Hicks noted that this evening's request came to the Zoning Board of Appeals as an appeal of the zoning administrator's decision and that it did not come to the Board as a request for a variance which was a separate procedure under the Zoning Ordinance.

Mr. Terrell said his client could file a variance request tomorrow.

Mr. Hicks said that was correct, but he wanted it made clear that there were two different processes for this particular Board.

Mr. Graham pointed out that Section 23.8.0 specifically read that the Board of Appeals shall not alter or change the zoning district classifications of any property, make any change in the terms of this ordinance, or take any action which results in effect in making such legislative changes.

Mr. Hicks said in response to Ms. Laforet's comment about changing the definitions of pets and livestock to either include or exclude certain animals, Section 23.8.0 prohibited the Zoning Board of Appeals from taking such an action.

Mr. Terrell said Section 23.8.0 may prohibit such an action, but the Zoning Board of Appeals didn't necessarily have to go as far as changing the definition and that the Board could rule that Mr. Graham's interpretation that pot belly pigs didn't fall within what was generally classified as a pet was wrong and that the Board found that pot belly pigs did fall within the term of generally classified as a pet.

Mr. Hicks said such a decision would result in a change to the ordinance for the simple fact that you have now just abrogated the definition of swine and stricken it from livestock. He questioned if the Township would then have to look at the different species of the genus.

Mr. Terrell didn't feel it would be any different than the ordinance listing horse, but the ordinance didn't say pony in that pony was along the lines of a different genus than a horse. Mr. Terrell felt the Zoning Board of Appeals had the authority, and he didn't feel it went against what was in the ordinance, to rule in this situation that pot belly pigs fell within pets

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and that the definitions be sent back to the Township Board for further review.

Mr. Hicks said in response to Mr. Terrell's comment about it "wouldn't be" in conflict with anything in the ordinance by stating that the ordinance included swine and that there was a difference in the distinction with a horse because the ordinance didn't say equine, but rather the ordinance listed horse and in this instance, the ordinance stated swine and that it didn't make a distinction of what type of swine. Mr. Hicks didn't know how you could render a decision that eliminated swine from the ordinance given Section 23.8.0 that the Zoning Board of Appeals didn't have the authority to render a decision that resulted in a modification or change to the ordinance because you would still have swine within the definition of livestock.

Mr. Terrell said based on the individual facts and circumstances of this case, pot belly pigs fell within the definition of a generally accepted pet. He said the problem was that the Zoning Board of Appeals was stuck trying to make a decision that should have been made by the governing body, but he didn't feel the Zoning Board of Appeals had to look at it as so cut and dry as the way they were initially interpreting it.

Mr. Barnhart asked if there was anyone in the audience who would like to speak on this matter.

Jennifer (last name unknown), City of Lansing resident, said she had spoken in front of the Township Board on this issue and at that time, Mr. Hicks felt she was bringing up a "red herring" when she expressed concerns with this case causing pet owners from being forthright about their pets. Jennifer stated that she was a pig owner and that Lansing's Zoning Ordinance was very similar to Delta's however, it had been difficult to obtain information from City Officials regarding regulations pertaining to pot belly pigs. She noted that Lansing's ordinance included a definition of exotic animals which included domestic swine as pets and not agricultural swine. Jennifer said that she had taken her pet pig for a walk the other evening and had spoken to the neighborhood association's president who had indicated that she hoped her pig was under the radar due to what was happening in Delta Township. Jennifer noted that she was insulted by Mr. Hicks' comment that she was bringing up a "red herring" because there were a lot of people who lived in the surrounding communities that were very worried about the direction this case was going.

Mr. Hicks apologized to Jennifer that she felt insulted, but he noted that a "red herring" didn't mean that something was not true. However, he said what came up out of that meeting, not by Jennifer, but by others, was the insinuation that if action wasn't taken on this, then there would be voter reprisal. Mr. Hicks said all he was simply indicating was that fact alone was a "red herring".

Jennifer said she felt Mr. Hicks was speaking of a "red herring" because he was bringing up other people's generalizations outside of this meeting which she knew nothing about. She noted that what she had said was that there were a lot of people that owned animals that did not fall within the Township's strict guidelines of household pets that would go under the

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radar and not license their animals. Jennifer said her pig was registered and had his immunizations and lived inside her home. She felt there would be people who would still own these animals, but there wouldn't be any governing over them.

Mr. Hicks said the context of his comments was as it related to home occupations and the fact that people would still operate them whether or not the Township required them to license the operations and it was within that context that he had made the assertion of a "red herring". Mr. Hicks apologized for offending Jennifer and he said that it was certainly not his intention. However, he noted the idea that the Township should simply not govern or regulate a specific activity because it would result in people not coming forward and doing the right thing, that was the "red herring" and the idea that the Township should take no action or the Township should just permit whatever it was because if you regulate it and push people back into the corner, they were just going to do it anyways and result in this underground unlicensed home occupation was unsettling to him.

Jennifer said you don't just arbitrarily permit such uses, you regulate them which was exactly what Ms. Parr had mentioned in the beginning of the meeting that needed regulation and that you needed to speak to all owners of animals and not attempt to list animals. She said as far as the interpretation of swine goes and it included all breeds, she noted that there was a difference between domestic swine and agricultural swine.

Mr. Hicks said they were both swine.

Jennifer said the issue of domestic swine versus agricultural swine may have to be addressed.

Mr. Hicks said without identifying it and making it specific, all the Zoning Board of Appeals was left with is the definition of swine.

Jennifer said she wanted to make it clear that what she was upset about was that it had been implied that she was attempting to manipulate the conversation, or take it in another direction. Jennifer noted that she had stopped taking her pig for walks in fear that a neighbor may call the authorities. Jennifer noted that she had attempted to find information on the keeping of pot belly pigs and what she understood so far, they were allowed in the City of Lansing, but it was difficult to obtain a final decision which she felt could be impacted by Delta's decision because this case had developed a lot of interest. Jennifer indicated that when the owners of these animals can't take them for walks; it affected the health of the animal, the neighborhood, and the family. She noted that if the Township chose just not to permit this, but not to regulate this, people would act in a different way which was not a "red herring" or a misnomer, but it was accurate to say that it made much more sense to regulate a situation. She indicated that she would want any animal in her neighborhood regulated and licensed. Jennifer noted that when everyone chooses not to address it at all, people were still going to have their animals and that was not a "red herring" and that she wasn't a "red herring", but rather she was one of those people. Jennifer said she was asked to give her address for the

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record, but she didn't provide her address because she was scared and that she wasn't the only one.

Mr. Arking asked Jennifer when the City of Lansing's ordinance pertaining to pot belly pigs became effective.

Jennifer said it was her understanding that it had been brought to the City's attention several years ago in the same manner that this case was brought to the Township's attention where a neighbor had complained to Animal Control. She noted that the City decided not to address the situation because pot belly pigs were considered exotic animals. Jennifer said this was why it had been difficult for her to obtain information on this matter in writing.

Mr. Arking asked if there was a formal club or enthusiasts group of pot belly pig owners that met and had activities.

Jennifer said she belonged to several groups on Facebook and that her pig was a rescued Juliana pig from the National Juliana Pig Association. Jennifer noted that it cost her \$1000 to purchase her pig and that a big issue for some people was that pot belly pigs were hypo-allergenic and some people couldn't have pets due to their allergies which wasn't an issue for pot belly pigs. She noted that Ms. Schuiling had raised money for an attorney through many people who supported her whether they had a pot belly pig or not. Jennifer said she got involved in this case because she read an advertisement from Ms. Schuiling who was trying to find a home for her pot belly pig and the strict guidelines she had set. Jennifer noted that she had contacted Ms. Schuiling to inform her that there were many people who supported her and many pig owners that she hadn't even come across that would help support her cause. She said because Ms. Schuiling has had so much support, she had filed a petition and the Lansing State Journal got involved. She noted that Ms. Schuiling also held a fundraiser on-line and had raised over \$1,000 from people she didn't even know for an attorney because people didn't want to see her have to get rid of her pot belly pig. Jennifer noted that pigs were one of the three smartest animals and they don't know how to be separated from the people they had lived with and that they grieve and that it can go as far as they stop eating and they die. She noted that pot belly pigs were not agricultural animals that would be able to survive on a farm.

MOTION BY LAFORET, SECONDED BY PARR, THAT THE PUBLIC HEARING BE CLOSED. VOICE VOTE. CARRIED 6-0.

Ms. Laforet said if the Zoning Board of Appeals denied Ms. Schuiling's appeal this evening, she questioned what other alternatives Ms. Schuiling would have available to her.

Mr. Graham said if the Zoning Board of Appeals moved to affirm his decision this evening, Ms. Schuiling could file for a variance from a specific section of the ordinance, or she could file an application to amend the ordinance.

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Ms. Laforet questioned the process that would be followed if Mr. Schuiling petitioned to amend the ordinance.

Mr. Graham said if Ms. Schuiling filed an application to the Zoning Ordinance, she would provide specific language that would be forwarded to the Planning Commission for public hearing who would make a recommendation to the Township Board who would make the final decision.

Mr. Newman said if the Zoning Board of Appeals reversed Mr. Graham's interpretation, he questioned whether the Zoning Board of Appeals could send this back to the Township Board requesting that they consider amending the Zoning Ordinance.

Mr. Graham said if the Zoning Board of Appeals reversed his decision and determined that pot belly pigs were considered a pet, then he would inform the Township Board of the Zoning Board of Appeal's decision and he assumed that the Township Board may wish to possibly amend the ordinance. He said it would be up to the Township Board as to whether or not they chose to amend the ordinance.

MOTION BY LAFORET, SECONDED BY PARR, AS THE INTERPRETATION OF THE DEFINITION OF PETS VERSUS LIVESTOCK IS A GRAY AREA, I MOVE THAT THE ZONING BOARD OF APPEALS REVERSE THE ZONING ADMINISTRATOR'S DECISION AND ALLOW MS. SCHUILING TO KEEP HER POT BELLY PIG ON THEIR RESIDENTIALLY ZONED PROPERTY. FURTHER, I MOVE THAT THE DEFINITION OF PETS AND LIVESTOCK BE CLARIFIED WITHOUT A REFERENCE TO SPECIFIC BREEDS, GENUS, OR ANIMALS, BUT RATHER TO THEIR INTENDED USE.

Ms. Laforet said it was clear that pot belly pigs were not livestock, but rather they were considered a pet and that the concern or question was the inclusion of the word "swine" included in the definition of livestock and not considering that swine could include a pot belly pig which were not popular at the time the Zoning Ordinance was written. Ms. Laforet felt the Township would continue to have these types of issues come up with other animals unless the definition of pets versus livestock was changed and the ordinance should not refer to specific breeds, animals, or genus, but rather the animal's intended use. She said her motion would allow Ms. Schuiling to keep her pig at this point in time and that the Township Board could address this issue. Ms. Laforet didn't feel the Township Board would have to specify each and every kind of animal that was and wasn't allowed, but rather refer to their intended use. She said if its intended use was to live in a home either as a rescue animal or a pet that it had to abide by the immunization laws and all of the other issues that would not be considered to be a farm use. Ms. Laforet felt the Township needed to address this issue and change the actual definition of pet and livestock to be more consistent with the intended use of the particular animal.

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Mr. Arking didn't feel the Zoning Board of Appeals had the authority to change the law.

Ms. Laforet said she wasn't asking the Zoning Board of Appeals to change the law, but rather she wanted this matter to be sent back to the Township Board requesting that the definitions of pet and livestock be amended.

Mr. Arking felt the Zoning Board of Appeals had already asked the Township Board to consider amending the ordinance, and he was certainly in favor of urging the Township Board to consider it again, but until the Township Board amended the ordinance, the Zoning Board of Appeals couldn't rule as if the Township Board had amended the ordinance.

Mr. Hicks didn't feel the Zoning Board of Appeals could direct the Township Board to act on this matter.

Ms. Laforet noted that Mr. Graham had indicated that the Township Board could amend the Zoning Ordinance following a decision by the Zoning Board of Appeals.

Mr. Hicks said what Mr. Graham had stated was that if the Zoning Board of Appeals made an interpretation, Mr. Graham would inform the Township Board of the Zoning Board of Appeals interpretation and at that point in time, the Board may elect to amend the Zoning Ordinance or do nothing, but under no circumstance was the Township Board required to amend the Zoning Ordinance.

Mr. Hicks noted that it was a different situation if a private resident filed an application to amend the Zoning Ordinance. An example was given in regards to when the Zoning Board of Appeals made an interpretation regarding outdoor seating for restaurants as it related to how much seating was required and the calculation needed to be made for outside seating. The Zoning Board of Appeals made an interpretation that outdoor seating was treated differently than indoor seating for the purposes of calculating required parking at which point in time, Mr. Graham informed the Township Board of the Zoning Board of Appeals actions and the Township Board could either act on their actions or do nothing.

Ms. Laforet said the point of her motion was to inform the Township Board that the Zoning Board of Appeals had interpreted that pot belly pigs be considered as a pet and not livestock.

Mr. Hicks wanted to make it clear that the Zoning Board of Appeals couldn't direct the Township Board to take any action.

Ms. Laforet said her motion specified that the definition of pets and livestock be clarified so as not to indicate specific breeds, genus, or animals, but rather to the animal's intended use.

Mr. Hicks wanted to clarify the point that the Zoning Board of Appeals may not clarify the definitions of pets and livestock.

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Ms. Laforet said she understood that, but in the meantime, things would remain status quo, the Schuilings could keep their pot belly pig, this matter could be sent back to the Township Board and if they chose not to amend the definition of pets and livestock, Ms. Schuiling could file an application to amend the Zoning Ordinance.

Mr. Hicks said since the Zoning Board of Appeals was rendering an opinion as to whether Ms. Schuiling be allowed to keep her pot belly pig, whether or not the Township Board chose to do something, the Zoning Board of Appeals' had made an interpretation and the Township Board would not have to take any action.

Ms. Laforet questioned if her motion should be amended to read that the Schuilings be allowed to keep their pot belly pig at their residentially zoned property until clarification was made and or an amendment to the zoning ordinance was made.

Ms. Parr didn't feel it was fair to make the Schuilings go back and forth numerous times to the Township Board.

Ms. Laforet said it was her understanding that if the Zoning Board of Appeals voted this evening to uphold Mr. Graham's decision, Ms. Schuiling wouldn't have to get rid of her pet tomorrow, but rather she could file an application to amend the Zoning Ordinance.

Mr. Graham said Ms. Schuiling could file an application to amend the Zoning Ordinance, but he would have to consult with the Township's Attorney as to whether enforcement action would be taken.

Ms. Laforet said that was why she was not in favor of merely affirming Mr. Graham's interpretation this evening and that she would rather take this issue back to the Township Board because there were two attorney's present this evening that had different legal interpretations. Ms. Laforet was in favor of moving forward with her motion that this matter be sent back to the Township Board so that it retained the applicant's right to file a Zoning Ordinance Amendment. Ms. Laforet said after reading the Township Board's June 17th minutes when they had discussed this item, it was her understanding that what the Township Board was trying to say was if they allowed pot belly pigs today, where do they draw the line. It was Ms. Laforet's point to amend the definition of pets and livestock without going into a detailed list.

Mr. Arking agreed with Ms. Laforet that there were probably model ordinances that had addressed this subject successfully, but that is not the responsibility of the Zoning Board of Appeals and that the Township Board was required to act on Zoning Ordinance amendments.

Ms. Parr questioned if the proper way to handle this was to have Ms. Schuiling file an application to amend the Zoning Ordinance.

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It was noted that there were no guarantees that there wouldn't be an enforcement action taken while a Zoning Ordinance amendment was going through the process until Mr. Graham consulted with the Township's Attorney.

Ms. Laforet said the reason for her motion was to halt any enforcement action. Her fear was that if the Zoning Board of Appeals affirmed Mr. Graham's interpretation this evening, then enforcement action could happen.

Mr. Barnhart questioned what options the Zoning Board of Appeals had this evening.

Mr. Graham felt this was the question asked by Ms. Laforet when he referred to Section 23.8.0 of the Zoning Ordinance that states that the Zoning Board of Appeals shall affirm or reverse his decision acting in his capacity as Zoning Administrator.

Mr. Terrell felt what Mr. Newman had asked earlier this evening was correct in that if the Zoning Board of Appeals reversed Mr. Graham's interpretation and Ms. Schuiling was allowed to keep her pet, Mr. Graham would then inform the Township Board of the Zoning Board of Appeals decision. He felt the Township Board would either have to amend the ordinance, or leave it as is and let the interpretation of the Zoning Board of Appeals stand. Mr. Terrell said this was the Zoning Board of Appeals way of giving the Township Board a reason to take action if they chose to or allow the interpretation of the Zoning Board of Appeals stand.

MS. LAFORET WITHDREW HER MOTION.

MOTION BY LAFORET, SECONDED BY PARR, THAT IN THE CASE OF NICOLE SCHUILING, SEEKING AN APPEAL OF THE ZONING ADMINISTRATOR'S DECISION FILED ON JUNE 4, 2013 REGARDING THE RAISING OR KEEPING OF A POT BELLY PIG ON A RESIDENTIALLY ZONED PROPERTY, THAT THE DELTA TOWNSHIP ZONING BOARD OF APPEALS REACH THE FOLLOWING FINDINGS OF FACT:

- 1. THE WEBSTER'S NEW WORLD DICTIONARY DEFINES PETS AS AN ANIMAL THAT WAS TRAINED OR DOMESTICATED AND KEPT AS A COMPANION OR TREATED WITH FONDNESS.**
- 2. POT BELLY PIGS ARE OBTAINED AND KEPT AS COMPANIONS.**
- 3. SECTION 3.17.0 A OF THE ZONING ORDINANCE READS THAT THE KEEPING OF HOUSEHOLD PETS, INCLUDING DOGS, CATS, FISH, BIRDS, HAMSTERS, AND OTHER ANIMALS GENERALLY REGARDED AS HOUSEHOLD PETS, IS PERMITTED AS AN ACCESSORY USE IN ANY**

AGRICULTURAL OR RESIDENTIALLY ZONED DISTRICTS.

- 4. POT BELLY PIGS ARE GENERALLY REGARDED AS HOUSEHOLD PETS SINCE THEY ARE BRED AND RAISED TO BE PETS, NOT AS A SOURCE OF FOOD OR FIBER.**
- 5. THE SUBJECT PARCEL AT 4513 CRANBERRY COURT IS ZONED RB, LOW DENSITY RESIDENTIAL.**

THEREFORE, THE ZONING BOARD OF APPEALS REVERSES THE DECISION OF THE ZONING ADMINISTRATOR AND FINDS THAT THE RAISING OR KEEPING OF A POT BELLY PIG IS A PERMITTED USE IN A RESIDENTIAL ZONING DISTRICT.

Mr. Hicks said he respectfully disagreed with the motion for all of the reasons previously stated, but the Webster's definition of pet had no bearing on the instant case before the Zoning Board of Appeals, or the Zoning Ordinance because the Board needs to look no further than the ordinance itself for the definition of what livestock was and included in that definition, good, bad, or indifferent, at the time the Township Board adopted the Zoning Ordinance, it specifically chose to include swine in the definition of livestock. He felt it was impossible to ignore that. Mr. Hicks noted that if the Township Board went so far as to specifically include it, there was no better indication of the intent of the Board at the time they adopted the ordinance, that it wanted to include pigs. He didn't know how it could be interpreted any differently when a swine was a swine regardless of the breed or otherwise and where the ordinance indicated that there was a provision that was more restrictive than another, the ordinance directed application of the more restrictive provision. Mr. Hicks said add to that the fact that the section of the ordinance that did not allow the Zoning Board of Appeals to render a change he asked Mr. Graham to read the section of the ordinance that pertained to this provision.

Mr. Graham read Section 23.8.0, Limitations on Powers of the Zoning Board of Appeals, the Zoning Board of Appeals shall not alter or change the zoning classifications of any property, make any changes to the terms of the ordinance, or take any action which result in effect, in making such legislative changes.

Mr. Hicks said based on the different areas of the Zoning Ordinance, and the points that he had just made, he couldn't support the motion.

Ms. Laforet understood Mr. Hick's position, but her position was that the Zoning Ordinance's definition of pets versus livestock needed to be changed and if this was the only way to get the Township Board to acknowledge it and take action on it, then so be it.

ROLL CALL VOTE. TIED 3-3 (Arking, Barnhart and Hicks). MOTION FAILED FOR LACK OF A MAJORITY VOTE.

MOTION BY HICKS, SECONDED BY ARKING, THAT IN THE CASE OF NICOLE SCHUILING, SEEKING AN APPEAL OF THE ZONING ADMINISTRATOR'S DECISION FILED ON JUNE 4, 2013 REGARDING THE RAISING OR KEEPING OF A POT BELLY PIG ON A RESIDENTIALLY ZONED PROPERTY, THAT THE DELTA TOWNSHIP ZONING BOARD OF APPEALS REACH THE FOLLOWING FINDINGS OF FACT:

- 1. THE WEBSTER'S NEW WORLD DICTIONARY DEFINITION OF "PIG" REFERENES "SWINE".**
- 2. SECTION 2.2.0 OF THE ZONING ORDINANCE DEFINES LIVESTOCK AS: ANIMALS INCLUDING, BUT NOT LIMITED, HORSES, CATTLE, SHEEP, GOATS, SWINE, POULTRY, AND RABBITS.**
- 3. THE SUBJECT PARCEL AT 4513 CRANBERRY COURT IS ZONED RB, LOW DENSITY RESIDENTIAL.**
- 4. SECTION 9.2.0, USES PERMITTED BY RIGHT, DOES NOT PERMIT THE RAISING, OR KEEPING, OF LIVESTOCK IN THE RB ZONING DISTRICT.**
- 5. SECTION 3.17.0 A (1) OF THE ZONING ORDINANCE READS: THE KEEPING OF HOUSEHOLD PETS, INCLUDING DOGS, CATS, FISH, BIRDS, HAMSTERS, AND OTHER ANIMALS GENERALLY REGARDED AS HOUSEHOLD PETS, ARE PERMITTED AS AN ACCESSORY USE IN ANY AGRICULTURAL OR RESIDENTIAL ZONING DISTRICT. HOWEVER, THE ZONING ORDINANCE PROVIDES NO CRITERIA OR STANDARDS FOR MAKING A DETERMINATION AS TO WHAT ANIMALS "SHALL GENERALLY BE REGARDED AS HOUSEHOLD PETS".**
- 6. SECTION 1.3.0 A OF THE ZONING ORDINANCE READS THAT ANY CONDITION IMPOSED BY ANY PROVISION OF THIS ORDINANCE UPON THE USE OF ANY LOT, BUILDING, OR STRUCTURE, IS EITHER MORE RESTRICTIVE, OR LESS RESTRICTIVE THAN ANY COMPARABLE CONDITION IMPOSED BY ANY OTHER PROVISION OF THIS ORDINANCE, OR BY THE PROVISION OF ANY ORDINANCE ADOPTED UNDER ANY OTHER LAW, THE PROVISION WHICH IS MORE RESTRICTIVE OR WHICH IMPOSES THE HIGHER STANDARD OR REQUIREMENT SHALL GOVERN.**

THEREFORE, THE ZONING BOARD OF APPEALS AFFIRMS THE DECISION OF THE ZONING ADMINISTRATOR AND FINDS THAT THE RAISING OR KEEPING OF A POT BELLY PIG IS NOT A PERMITTED USE IN A RESIDENTIAL ZONING DISTRICT.

ROLL CALL VOTE. TIED 3-3 (Laforet, Newman, and Parr). MOTION FAILED FOR LACK OF A MAJORITY VOTE.

Mr. Graham suggested that this matter be placed on the Zoning Board of Appeals August meeting when there will be a full membership of the Board present.

MOTION BY ARKING, SECONDED BY LAFORET, THAT THE NICOLE SCHUILING APPEAL OF THE ZONING ADMINISTRATOR'S DECISION BE TABLED UNTIL THE AUGUST 13, 2013 MEETING OF THE ZONING BOARD OF APPEALS. VOICE VOTE. CARRIED 6-0

VII. NEW BUSINESS

Zoning Ordinance Appeal: Mr. Aaron Long, owner of the property at 215 ½ Winifred Avenue, is appealing the Zoning Administrator's decision regarding Sections 3.5.0 and 24.2.0 (D) of the Zoning Ordinance.

Mr. Graham said in May, 2013, Aaron Long requested permission to remodel a building at the rear of his house so that it could be occupied as a single family home. He noted that both the outbuilding and the house were built in 1947. Mr. Graham indicated that Mr. Long remodeled the main house and obtained the necessary rental license from the Township and currently had a tenant living in the house. He noted that Mr. Long would like to remodel the building to the rear of his property and also make it into a rental unit. Mr. Graham said he reviewed a floor plan Mr. Long had provided him which illustrated a kitchen, two bedrooms, and a bathroom, as well as maintaining the existing garage on the southernmost portion of the building. He also noted that the Township's Assessing Department records made reference to the fact that the building included a bath, kitchen and two bedrooms and that the garage area was confined to the south 12 feet of the building. He noted that Mr. Long had indicated that the plumbing, electrical system, and interior walls had remained in the building. Mr. Graham said acting in his capacity as Township Zoning Administrator, it was his determination that the occupancy of the back building would constitute a non-conforming use because Section 3.5.0 of the Zoning Ordinance reads that "a lot or parcel shall contain no more than one single family dwelling, nor more than one two-family dwelling". Further, Section 24.2.0 of the Zoning Ordinance reads that "non-conforming uses shall not be re-established if abandoned for a period of greater than ninety consecutive days". He noted that the ordinance didn't define the term "abandoned", but since the back building had not been used for many years as a dwelling unit, he didn't feel he could make a determination other than it would constitute the re-establishment of a non-conforming use.

Mr. Graham said Mr. Long filed an appeal application which requested that the rear building be occupied as a dwelling unit. The application indicated that the exterior of the building would not be remodeled and that the building would be repainted and re-roofed, but the interior of the building would be a complete remodel. Mr. Graham said the staff report provided to the Board dated June 27th indicated that Section 23.2.0, Jurisdiction of the Board of Appeals, noted that the Zoning Board of Appeals could reverse or affirm the Zoning Administrator's interpretation. His staff report also noted that in 2005, the Board granted a variance to allow the unenclosed porch on the front of the house to be three feet from the property line rather than the required five feet. However, Mr. Graham didn't feel that the variance any bearing on the instant case, but he wanted the Board to be aware of the variance.

Mr. Graham noted that he had written a letter to Mr. Long on May 28th which stated that it was his interpretation that Mr. Long could not occupy the second dwelling unit. After May 28th, Mr. Graham received an opinion from the Township Attorney regarding the issue of abandonment and the section that specifically addressed abandonment in the Zoning Ordinance and in light of that, he had drafted two motions for the Board's consideration. Mr. Graham noted that the first motion was to affirm his decision that residential occupancy of the second building at 215 Winifred would constitute the re-establishment of a non-conforming use prohibited by Section 24.2.0. He said the second motion would reverse his decision based upon five findings of fact and permit the residential occupancy of the second building.

Mr. Arking questioned if the back building had been used for anything in the past. He also questioned if the back building would be issued a separate address if Mr. Graham's decision was reversed.

Mr. Graham said Mr. Long referred to the building as 215 ½, but he didn't know at this time how the Township would establish an address for the second building. He noted that the back building was serviced by public utilities.

Aaron Long, 6406 Macadam Way, Dimondale, noted that both the main house and the back building had their own sanitary sewer leads. He noted that public water would be available via one waterline lead.

Ms. Laforet questioned if staff had received any correspondence from the neighbors on this request.

Mr. Graham said due to the fact that this was not a variance request, but rather an appeal of the Zoning Administrator's decision, notices were not sent to adjacent property owners.

Mr. Long reviewed the utility status of the property and the usage history by noting that he had spoken to Dave Swink at the Township's Utility Department who provided him with a couple different options, one of which was to have both units on one meter. Mr. Long noted that due to the fact that it was a rental, he wouldn't be able to split the bill so rent would

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include the water bill which he would have to pay under his name. He noted that there were two different hookups for electrical and gas service. Mr. Long said he was appealing Mr. Graham's decision based on the fact that the building to the rear of his property had always been a rental unit and that it had always had separate utilities. He noted that he was planning on improving the aesthetics on the outside of the building and completely renovate the inside in order to convert the building into a second rental. Mr. Long indicated that there was a gravel driveway on the south side of the house that would service the building to the rear.

Mr. Hicks questioned when the rear building was last used as a residence.

Mr. Long said he didn't know the last time the building had been used as a residence, but since he had purchased the home in 2005, the rear building had been vacant.

Mr. Hicks asked if Mr. Long knew when the rear building had been boarded up.

Mr. Long said the rear building was in its current condition when he purchased the property.

Ms. Parr asked Mr. Long if he was a licensed contractor.

Mr. Long said he wasn't a licensed contractor and that he would either be doing the repairs himself or hiring a licensed contractor. Mr. Long said he was aware of the Township's building permit requirements.

Mr. Arking said he wasn't sure that the rear building had lost its status as a legal, non-conforming use just because it's been abandoned. He said the definition of abandonment had been interpreted liberally by the courts and that it seemed to be a pro-active process and not a passive process. Mr. Arking felt something had to be done to abandon a building such as tearing it down or not taking care of it. He felt boarding the building up was still an act of ownership and that it was still taking care of the building. Mr. Arking acknowledged the motion to reverse the Zoning Administrator's decision offered by Mr. Graham and he suggested Mr. Long's appeal be reviewed by legal counsel.

Mr. Graham said he had obtained an opinion from the Township Attorney pertaining to non-conforming uses within the industrial tract.

Mr. Hicks said he would prefer to obtain an opinion from the Township Attorney that would apply current law to the circumstances and facts in this particular case.

Mr. Long said he didn't have a problem with tabling his request for 30 days while the Board obtained a legal opinion on this matter. He didn't feel the building had ever been abandoned since he had owned the building.

Mr. Newman said having grown up in the City of Detroit, his interpretation of an abandoned

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dwelling was that the dwelling was not safe and secure, but in this instance, the property owner had been maintaining the property around the building and that there weren't any safety issues.

Mr. Long said his tenant who lived in the main house obtained Section 8 rental assistance and that a HUD inspector annually inspected the property and the HUD inspector had asked him to board up the windows in the rear building to make it safe for his tenants who lived in the main house. However, Mr. Long didn't feel there were any safety issues.

Ms. Laforet asked if the Township considered the building an accessory building or was it considered a residence.

Mr. Graham assumed the Township considered it as an accessory building.

Mr. Barnhart questioned what the applicant would be allowed to do without a permit.

Mr. Graham said the applicant could paint the exterior of the building and maintain the roof, but he didn't know the Building Code well enough to know whether Mr. Long could make any renovations to the inside of the building.

Mr. Long said he wouldn't want to put any money into the rear building until he received approval from the Township that the rear building could be used as a residential dwelling and as a rental unit.

MOTION BY HICKS, SECONDED BY LAFORET, THAT AARON LONG'S APPEAL OF THE ZONING ADMINISTRATOR'S DECISION REGARDING SECTIONS 3.5.0 AND 24.2.0 (D) OF THE ZONING ORDINANCE, BE TABLED UNTIL THE SECOND TUESDAY OF AUGUST, OR UNTIL SUCH TIME AS STAFF IS ABLE TO OBTAIN A LEGAL OPINION AND SCHEDULE A SPECIAL MEETING.

Mr. Graham said it would be beneficial if Mr. Long could attempt to research this matter to determine the last time the rear building was occupied as a residence.

IV STAFF COMMENTS - None

X BOARD COMMENTS

XI ADJOURNMENT

Vice Chairman Barnhart adjourned the meeting at 8:15 p.m.

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DELTA CHARTER TOWNSHIP

Mary Clark, Secretary to the Zoning Board of Appeals

Minutes prepared by Anne Swink